

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: December 29, 2003

Cancellation No. 92031118

HARDCORE ENTERPRISES PTY. LTD.

v.

RCN - COMPANHIA DE IMPORTACAO
E EXPORTACAO DE TEXTTEIS,
LIMITADA

Peter Cataldo, Interlocutory Attorney

On September 30, 2003, the Board suspended action in this proceeding pending the disposition of petitioner's motion to compel discovery responses (filed August 22, 2003).¹ In its motion to compel, petitioner seeks an order (1) compelling respondent to respond to its first set of interrogatories as well as its first set of requests for production of documents; (2) deeming admitted petitioner's first set of requests for admission²; (3) allowing petitioner "additional time to serve follow-up discovery";

¹ As such, petitioner's request that the Board suspend the commencement of its testimony period pending disposition of its motion to compel is moot.

² It is noted that petitioner, in its motion to compel, makes reference to Trademark Rule 2.120(h) with regard to its requests for admission. Accordingly, with regard to petitioner's admission requests, the Board construes petitioner's motion as one seeking to test the sufficiency of respondent's responses thereto.

and (4) sanctioning respondent in the event it fails to comply with a Board order to respond to petitioner's discovery requests.

Office records indicate no response thereto.

Motion to Compel

Accordingly, petitioner's motion to compel discovery responses is hereby granted as conceded to the extent indicated below. See Trademark Rules 2.120(e) and 2.127(a). Respondent is allowed until 30 days from the date of this order to fully respond without objection to petitioner's first set of interrogatories and first set of requests for production of documents.

Motion to Test Sufficiency of Responses to Admission Requests

In addition, petitioner's first set of requests for admission is deemed admitted. See Trademark Rules 2.120(h) and 2.127(a).

Request for Sanctions

In the event respondent fails to comply with this order, the Board may entertain a motion for discovery sanctions. Petitioner's request for discovery sanctions otherwise is premature and will be given no consideration. See Trademark Rule 2.120(g).

Request to Reopen Discovery

Petitioner's request to allow it additional time in which to propound follow-up discovery is, in essence, a

motion to reopen the discovery period, which closed in this proceeding on July 10, 2003. Petitioner's request is denied inasmuch as petitioner has failed to make a showing of excusable neglect sufficient to warrant a reopening of discovery. See *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993); and *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997).

Dates Reset

Testimony periods are reset as indicated below. IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. Trademark Rule 2.125.

DISCOVERY TO CLOSE:	CLOSED
Testimony period for party in position of plaintiff to close (opening thirty days prior thereto)	March 30, 2004
Testimony period for party in position of defendant to close (opening thirty days prior thereto)	May 29, 2004
Rebuttal testimony period to close (opening fifteen days prior thereto)	July 13, 2004

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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